

EXHIBIT B

September 6, 2019

Mr. Douglas Hibbard
Chief, Initial Request Staff
U.S. Department of Justice
441 G St, N.W., 6th Floor
Washington, D.C. 20530-0001
202-514-3642 (phone)

Re: FOIA Request for Correspondence Relating to Andrew McCabe

Dear sir or madam:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, we hereby request that your office produce the following records within 20 business days:

1. Any e-mail messages from Matthew Whitaker received by Christopher Ott, George Toscas, or Adam Hickey making reference to Andrew McCabe in the period from March 1, 2018, to March 31, 2018.

We also request any records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

If you make a determination that any responsive record, or any segment within a record is exempt from disclosure, we ask that you provide an index of those records at the time you transmit all other responsive records. In the index, please include a description of the record and the reason for exclusion with respect to each individual exempt record or exempt portion of a record, as provided by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). When you deem a portion of a record exempt, we ask that the remainder of the record to be provided, as required by 5 U.S.C. §§ 552(a)(8)(A)(ii) & 552(b).

FEE WAIVER

FOIA provides that any fees associated with a request are waived if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

We are the editor-in-chief and senior editor for *Lawfare*, an online publication dedicated to informing public understanding on operations and activities of the government. *Lawfare* is published by The Lawfare Institute, a 501(c)(3) not-for-profit educational organization, and in cooperation with The Brookings Institution, a 501(c)(3) nonprofit public policy organization. This request is submitted in connection with *Lawfare*’s mission to publish information that is likely to contribute significantly to the public understanding of federal agency activities related to law and national security. Specifically, the Justice Department is reportedly contemplating criminal charges against former Acting Director of the FBI Andrew McCabe. McCabe has, in turn, alleged that his March 2018 termination and subsequent actions against him are part of a politically motivated campaign against him that President Trump and his associates are pursuing. See Adam Goldman, “Prosecutors Near Decision On Whether to Seek an Andrew McCabe Indictment,” *The New York Times*, Aug. 26, 2019, <https://nyti.ms/2UeGfqp>. Correspondence among and between relevant senior Justice Department officials will provide the public with valuable information regarding possible politically-motivated involvement in the March 2018 decision to fire McCabe.

In addition to satisfying the requirements for a waiver of fees associated with the search and processing of records, we are entitled to a waiver of all fees except “reasonable standard charges for document duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Federal law mandates that fees be limited to document duplication costs for any requester that qualifies as “a representative of the news media.” *Id.* *Lawfare* is a “news media organization[]” that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” *Nat’l Sec. Archive v. Dep’t of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). We intend to give the public access to documents transmitted via FOIA on our website, <https://www.lawfareblog.com>, and to provide information about and analysis of those documents as appropriate.

EXPEDITED PROCESSING

FOIA provides for expedited processing where a requestor “demonstrates a compelling need.” 5 U.S.C. § 552(a)(6)(E)(i). It defines “compelling need” to include situations where a “request [is] made by a person primarily engaged in disseminating information” and there exists an “urgency to inform the public concerning actual or alleged Federal Government activity.” *Id.* § 552(a)(6)(E)(v). Relevant Justice Department regulations further indicate that “[r]equests and

appeals shall be processed on an expedited basis whenever it is determined that[,]” inter alia, it relates to “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.” 28 C.F.R. § 16.5(e)(1)(iv).

Lawfare is an organization primarily engaged in the dissemination of information. As noted above, numerous media reports have indicated that the Justice Department is considering imminent criminal charges against McCabe. If these charges are ultimately brought in part in response to political pressure being applied by figures within the Trump administration, then this would raise serious concerns with the integrity of the Justice Department and broader Trump administration. This, in turn, may undermine public confidence in relevant officials and institutions.

* * *

Given the 20-day statutory deadline, we hope to be as helpful as possible in clarifying or answering questions about our request. Please contact us by phone or email if you require any additional information. We appreciate your cooperation, and look forward to hearing from you very soon.

Sincerely,

/s/ Benjamin Wittes

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